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EXAMINER

HEITBRINK, TIMOTHY W

ART UNIT PAPER NUMBER

1722

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20040304

Application Number: 09/924,285  
Filing Date: August 08, 2001  
Appellant(s): BELLASALMA ET AL.

**MAILED**

**MAR 19 2004**

**GROUP 1700**

\_\_\_\_\_  
David L. Wisz  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 31, 2003.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: claims 2 and 13 while correctly mentioned as being rejected under 35 USC 103 on page 3 of the brief, the heading under "B" is incorrect. The Examiner will assume 35 USC 103 was intended.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 1-32 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8). Although claims 2,13 and 19 fall out in groups I, II and III, the Examiner will treat claims 1,3-7,9-32 as group I, claim 8 as group II and claim 2 as group III based on appellant's arguments.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

4239732	Schneider	12-1980
5435710	Gumery et al.	07-1995
5498151	Nennecker	03-1996

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-9,12,14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nennecker.

Nennecker discloses a valve assembly comprising a port at the end of fluid flow passageway 36 to a mold assembly 22, a coupler having a piston rod 18,21, said coupler receiving a mix head 11, said fluid flow passageway 36 located from said coupler to said port, said piston rod 18,21 movable within said fluid passage along a first axis between a first position which allows flow from said coupler to said port and a

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second position which seals said port. Said fluid flow passage 36 includes a first flow passage containing a port 25 along said first axis, a third flow passage below said port and along said first axis and a second flow passage substantially perpendicular to said first axis, wherein said second passage includes a first second passage portion within said coupler head and a second, second passage portion within the mix head. The second flow passage including a second piston 15 circular in cross section.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nennecker.

While the piston rod 18,21 of Nennecker is not square in cross-section, such a change in shape would have been obvious in light of In re Dailey, 357 F.2d 669, 672-73, 149 USPQ 47, 50 (CCPA 1966) where a change in shape not effecting the operation of the device.

Claims 1,3-10,12,14-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Gumery et al.

Gumery et al. disclose a valve assembly comprising a port 7 to a mold assembly containing article 7, a coupler 26 for receipt of a mix head 17, a fluid flow passage from said coupler to said port and a rectilinear piston 38 movable within said fluid passage along a first axis between a first position which allows flow from said coupler to said port

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and a second position which seals said port. The fluid flow passage includes a first flow passage along said first axis and a second flow passage substantially perpendicular to said first axis. The second passage includes a first second passage portion within said coupler head and a second, second passage portion within said mix head. A second piston 32 movable within said second flow passage. A third flow passage 23,24 communicating with said second flow passage in a perpendicular relationship and the second piston movable between a first position which allows flow from said third flow passage to said second flow passage and a second position which prevents fluid flow from said third flow passage to said second flow passage.

Claims 2,13,27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gumery et al.

While the piston 38 is not square in cross-section, such a change in shape would have been obvious in light of In re Dailey, 357 F.2d 669, 672-73, 149 USPQ 47, 50 (CCPA 1966) where a change in shape not effecting the operation of the device is considered within the skill of the ordinary artisan. Angling the piston away from the mix head axis would have been obvious in light of In re Dailey, 357 F.2d 669, 672-73, 149 USPQ 47, 50 (CCPA 1966) for reasons given supra.

Claims 11,22,28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nennecker as applied to claims 1-9, 12-20 above, and further in view of Schneider.

While Nennecker does not disclose a lock assembly (interlocking surfaces) within the coupler to engage the mix head with the coupler, Schneider discloses a lock assembly within a coupler 10 so as to secure a mix head 20 therein.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a lock assembly in the coupler of Nennecker in order to secure the mix head therein as suggested by Schneider.

Claims 11,22-26,31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gumery et al. as applied to claims 1-10, 12-21 above, and further in view of Schneider.

While Gumery et al. does not disclose a lock assembly (interlocking surfaces) within the coupler to engage the mix head with the coupler, Schneider discloses a lock assembly within a coupler 10 so as to secure a mix head 20 therein.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a lock assembly in the coupler of Gumery et al. in order to secure the mix head therein as suggested by Schneider.

(11) Response to Argument

Appellant argues the Examiner's interpretation of "cross-section" is repugnant to its ordinary meaning. The Examiner disagrees. As cited by dictionary.com on page 4 of the appeal brief, a cross-section is formed by a plane cutting through an object, usually at right angles to an axis. It is the Examiner's position that this no way excludes a plane cut through the longitudinal axis, where the longitudinal axis is at a right angle to a

lateral axis. Thus, the Examiner's position is consistent with the meaning provided by Appellant.

Appellant further argues the Examiner's interpretation of claim 8 is improper since it is not consistent with the specification. The Examiner disagrees. The second pistons 15 and 32 found in Nennecker and Gumery et al. respectively have a cross-section whose shape is circular when taken along a lateral axis. Thus, such an interpretation is consistent with the specification and also is consistent with the meaning of cross-section provided by Appellant.

Lastly, appellant argues the Dailey case is not binding in this application since it is a 1966 case. The Examiner disagrees. The Dailey case is pertinent even in 2004 since said case has not been overturned. Appellant continues by arguing the rectilinear shape (i.e. the square cross-sectional shape of claim 2) does affect operation and provides numerous advantages as disclosed on page 4, paragraph 25. The Examiner disagrees. As set forth in Nennecker, column 4, lines 52-67, residual molding material left in the passageway is displaced and forced into the mold. This is consistent with the advantages disclosed by appellant on page 4, paragraph 25. Thus, it is the Examiner's position that a circular shaped body is just as effective since it also contacts the side walls equally as well. Thus, such a change in shape when taken in light of In re Dailey, 357 F.2d 669, 672-73, 149 USPQ 47, 50 (CCPA 1966) would have been obvious to those of ordinary skill in the art.

For the above reasons, it is believed that the rejections should be sustained.



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Respectfully submitted,



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Primary Examiner  
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3-16-04

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March 16, 2004

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